IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

THOMAS CHANDY VS. RAJASTHAN .FINANCIAL CORP.

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D.B.CIVIL SPECIAL APPEAL (WRIT)NO.662/1998 AGAINST THE JUDGMENT OF THE LEARNED SINGLE JUDGE DATED 4.4.89.

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Date of Judgment :- March 02,2006

PRESENT

HON'BLE MR.JUSTICE RAJESH BALIA
HON'BLE MR.JUSTICE R.P. VYAS.

Mr. M. Mridul, Sr. Advocate with Mr. Ravi Bhansali for the appellant.
Mrs. P. Dave for the respondents.

BY THE COURT (PER HON'BLE MR.BALIA,J):-

Heard learned counsel for the parties.

The facts which are not in dispute are that the appellant as per his application dated 7.7.80 was holding the qualification of Secondary and technical qualification of 40 w.p.m. In English Type writing and fair knowledge in stenography.

On the basis of above qualification, petitioner was given appointment on stipendiary post. After about 3 years

the petitioner was appointed regularly vide Annexure-4 dated 16th May 1983 on the post of typist in the pay scale of Rs.270/- - 440 /- on a basic pay Rs.270/-per month with usual allowance till further orders. It was to be governed by the Rajasthan Financial Corporation (Staff) Regulation, 1958 and annual grade increments to these persons be available only after qualifying in stenography or passing of graduate examination.

Thereafter by order dated 16th February 1985, the services of the petitioner were terminated alleging that he has neither acquired the qualification of graduate nor the required speed in shorthand/typing. This order dated 16th Feb.1985 was subjected to challenge by way of writ petition before this Hon'ble Court. However, during the pendency of the said writ petition, by the order dated 18th November 1985 the order dated 16th Feb.1985 terminating services of the petitioner was withdrawn retrospectively with effect from date it was issued. Consequently, the writ petition was withdrawn.

The petitioner being in continuous service on the post of typist has ultimately filed this writ petition on 24th July 1989 seeking direction to the respondents to regularise his

services on the post of typist/Junior Assistant with effect from the date of his initial appointment in the month of July1980. or in the alternative he sought regularisation and confirmation of his services on the post of typist with effect from 16.5.83 when he was first appointed on temporary basis after having served on the stipendiary post for three years.

Learned Single Judge held that the petitioner has not acquired the qualification of graduate ,therefore, he is not entitled for relief and he is ineligible to hold the post of typist. The requisite qualification which is prevailing at the time of filing of the petition and the judgment under appeal was quoted as under :-

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(a) Graduate knowing typing with a speed of 40 w.p.m. in English /Hindi,

(b) Secondary or equivalent knowing shorthand and a typing at a speed of 80/40 w.p.m in English and 60/30 w.p.m in Hindi.

Relying on earlier decision in S.B.C.Writ Petition No.3654/89 Sant Kumar Sharma vs R.F.C, it was held that the condition of giving annual grade increment only on passing of

graduate examination cannot be considered bad. Consequently, the writ petition was dismissed.

Hence, this appeal against the judgment dated 6th April 1998

The fact that the petitioner appellant continued in service,firstly on the stipendiary post and thereafter on temporary basis the post since 1980 and completed almost 26 years is not in dispute.

The petition has been contested solely on the ground that the appellant petitioner did not acquire qualification of graduate to be appointed on the post of typist,therefore, he has no right to hold the post nor he can seek regularisation on the post. For this reliance has been place on two materials before us as stated above. However, we must observe at the out set that even rule referred and relied upon by the learned Single Judge provide two alternative eligibility qualifications to be appointed on the post of Typist. While much stress has been laid on not holding the qualification of graduate but it was no nobody's case that petitioner was not qualified to be appointed as typist on alternative qualification prescribed. Nor this was

considered by learned Single Judge.

The question that need to be examined in the first instance is whether the petitioner holds requisite eligibility qualification when he was appointed to find whether initial appointment of petitioner was valid or not. That issue has not at all been addressed, which is a relevant consideration in considering whether petitioner is entitled to relief or if the very appointment of the petitioner was de hors the rules as to confer no right on the petitioner. By the amendment made somewhere after 1986 the qualification of graduate came to be prescribed as one of the eligibility criterion for appointment on the post of Typist/ Junior Assistant.

What is relevant is at the time when Anneuxre-4 was issued giving appointment against regular post to the petitioner after he has served on stipendiary post for three years, it was stated that his services will be governed by Rajasthan Financial Corporation (Staff) Regulations,1958 and that annual grade increment would be available on fulfilment of the either of two conditions viz either after qualifying in stenography or passing of graduate examination. Only one sided consideration has been focussed while considering the case of

the petitioner by the employer or by the learned Single Judge by laying stress on qualification of graduate ignoring the two qualification were independent of each other as the same were disjunctive by use of word 'or' . Even if it is to be considered, as has been conceded by learned counsel for the appellant that Madhyama, and Utma cannot be held qualification for the purpose of equivalence to Graduate, he was otherwise qualified to hold the post of typist. One of the two alternative qualification in the Rules noticed by the learned Single Judge was held by the petitioner as per application Annexure-1 which was never in dispute.

In fact the petitioner was first appointed on 16.5.83 and at least until 19.9.86 the Rajasthan Financial Corporation (Staff) Regulations,1958 were in force with the Corporation governing recruitment of the typist reads as under:-

> "Jr.Assistant / Typist :C: Class employees:
> Secondary or equivalent with 3 years experience on the post mentioned in column No.4 and (a) knowing typing at a speed of 40/30 w.p.m in English/Hindi

or (b) must have shown potentialities
to work as a Junior Assistant."

This rule has been quoted from 1986 edition of Staff Rules made available to us by learned counsel for the Corporation.

A bare perusal of the aforesaid rules shows that Graduation was not the qualification until 1983. It is in 1986 the post of Typist/ Junior Assistant carried pay scale of Rs.520-10-550-15-640-20-840 whereas pay scale applicable to the post of at the time of appointment was given to the petitioner was only Rs.270- 10- 380- 20-440. The aforesaid qualification nowhere prescribed graduation as requisite qualification for appointment on the post of Typist/ Junior Assistant. Therefore, it cannot be said that when the petitioner was appointed on the post of Typist temporarily, de hors the rules, and was not eligible to be appointed when he was so appointed. Therefore, the initial appointment was not a back door entry to an ineligible person, but the appointment was given to petitioner who was eligible to hold post, only after he has satisfactory worked for three years on stipend and his work and efficiency was evaluated .Subsequent alteration in qualification cannot

invalidated appointment made in the first instance under the Rules then existing under which indisputably petitioner was fully eligible. The Corporation in fairness has not contested the position that initial appointment was valid one and under the rules.

On the admitted premises, petitioner worked for more than 26 years. Demonstratively, it is clear from the Rules which have been relied upon by the respondents before the learned Single Judge and which have been considered by the learned Single Judge that merely because the incumbent is not graduate, is not the sole ground on which one can be considered ineligible. It is only one of the alternate eligibility criterion. The incumbent is not qualified on alternative ground. It is not the case of respondents. When he was appointed, he was fully eligible to be appointed as Typist.

In these circumstances, in our opinion, the principles enunciated in State of Haryana vs Piara Singh AIR 1992 SC 2130 fully governs the case of the appellant in which it has been unequivocally held that due care and caution be taken against the recourse to continue ad hoc appointment for making regular appointment. If for any reason, an ad hoc or

temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

We are of the opinion, the petitioner appellant is entitled for direction in terms of above.

Accordingly, the judgment under appeal is set aside. Writ petition is allowed. The respondents are directed to consider the case of the appellant for regularising his services, even if he is not graduate, but fully eligible having alternative qualification to hold the post. Annual grade increment also cannot be denied only because the incumbent is not graduate. As the petitioner is found to be having alternative eligibility criterion in terms of appointment letter dated 16.5.83 and the Rules, he is also entitled to release of annual grade increments.

(R.P.VYAS)J. **(RAJESH BALIA)J.**

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